

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CESAR RODRIGUEZ,
Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION;
CORRECTIONAL OFFICER J.
PUENTE; CORRECTIONAL
OFFICER S. BURRIS;
CORRECTIONAL OFFICER J.
MCMILLAN,
Defendants.

No. C 10-2585 WHA (PR)

**ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT**

(Docket No. 11)

INTRODUCTION

Plaintiff, a California prisoner proceeding pro se, has filed a civil rights complaint under 42 U.S.C. 1983 against the California Department of Corrections and Rehabilitation (“CDCR”), and Correctional Officers J. Puente, S. Burris, and J. McMillan, all members of Pelican Bay State Prison’s Institutional Gang Investigations Unit. The claims against the CDCR were dismissed, and the other defendants have filed a motion for summary judgment. Plaintiff has filed an opposition, and defendants have filed a reply. For the reasons set out below, defendants’ motion for summary judgment is **GRANTED**.

ANALYSIS

A. STANDARD OF REVIEW

Summary judgment is proper where the pleadings, discovery and affidavits show that

1 there is "no genuine issue as to any material fact and that the moving party is entitled to
2 judgment as a matter of law." Fed. R. Civ. P. 56(c). Material facts are those which may affect
3 the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute
4 as to a material fact is genuine if there is sufficient evidence for a reasonable jury to return a
5 verdict for the nonmoving party. *Ibid.*

6 The moving party for summary judgment bears the initial burden of identifying those
7 portions of the pleadings, discovery and affidavits which demonstrate the absence of a genuine
8 issue of material fact. *Celotex Corp. v. Cattrett*, 477 U.S. 317, 323 (1986); *Nissan Fire &*
9 *Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1102 (9th Cir. 2000). When the moving party has
10 met this burden of production, the nonmoving party must go beyond the pleadings and, by its
11 own affidavits or discovery, set forth specific facts showing that there is a genuine issue for trial
12 *Ibid.* If the nonmoving party fails to produce enough evidence to show a genuine issue of
13 material fact, the moving party wins. *Ibid.*

14 **B. PLAINTIFF'S CLAIMS**

15 In 2003, plaintiff was placed in solitary confinement in Pelican Bay's Secured Housing
16 Unit ("SHU") for six years based on his validation as a member of the "Mexican Mafia" prison
17 gang. Under the CDCR's regulations, an inmate who has been validated as a gang member may
18 be reclassified as an "inactive" and released from the SHU after a six-year period without any
19 documented gang activity. *See* 15 Cal. Code Regs. 3378. In July 2009, defendants determined
20 that plaintiff was still affiliated with the gang, re-validated him as a gang member, and returned
21 him to the SHU for another six-year term. The sole remaining issue is whether the evidence
22 was sufficient to support his re-validation as a gang member.

23 Defendants do not dispute that plaintiff has a liberty interest in remaining in general
24 population rather than being segregated in the SHU, a liberty interest he cannot be deprived of
25 without being afforded the procedures required by due process. *See Wilkinson v. Austin*, 545
26 U.S. 209, 221 (2005) (prisoners cannot be deprived of liberty interest without due process).
27 One of the due process protections applicable to decisions to impose administrative segregation,
28 the type of segregation at issue here, is that there be "some evidence" to support the decision.

1 *Bruce v. Ylst*, 351 F.3d 1283, 1287-88 (9th Cir. 2003) (SHU segregation case). In considering
2 that question, the court does not “examine the entire record, independently assess witness
3 credibility, or reweigh the evidence.” *Id.* at 1287. The relevant question is whether there is *any*
4 evidence in the record that could support the conclusion. *Ibid.* Due process requires only
5 “some evidence” of gang activity, and that evidence requirement is satisfied if the decision is
6 supported by even one reliable piece of evidence. *Id.* at 1288.

7 It is undisputed that the evidence upon which the re-validation was based was a
8 statement in a letter written by plaintiff, and intercepted by prison officials, in June 2009. The
9 letter states: “y de lo del ojales de aros pues todo lo que se a oido is la pura verdura” (Opp. Exs.
10 D, E). In proper Spanish, this phrase was nonsensical, translating to “and about the buttonholes
11 from hoop earrings well everything that has been heard is the pure vegetables” (*id.* Ex. E).
12 Therefore, defendants determined that the letter was not written in proper Spanish, but rather in
13 a Spanish dialect called “Caliche” that is commonly used by Spanish-speaking inmates in
14 California prisons (*ibid.*). In Caliche, the phrase “ojales de aros” means “rice eyes” and
15 “verdura” means “truth,” such that the excerpted phrase as a whole translates to “and about the
16 rice eyes, well everything you heard is pure truth” (*id.* Ex. B). This phrase denotes gang
17 activity because “rice eyes” is a nickname for a Mexican Mafia gang member named Arturo
18 “Chino” Padua (*id.* Exs. B, E).

19 Plaintiff contends that the evidence is “fabricated” because he never wrote the Spanish
20 words for “rice” (“arroz”) or “eyes” (“ojos”), and denies being in a gang or writing about Padua
21 or any other gang member. Defendants do not dispute that plaintiff did not use the proper
22 Spanish words for “rice eyes.” Rather, they relied upon a Spanish translator to inform them that
23 the letter was not written in proper Spanish, but rather in Caliche (*id.* Ex. E). Plaintiff does not
24 dispute that in Caliche, the phrase “ojales de aros” does mean “rice eyes,” nor does he explain
25 why, if he wrote the letter in proper Spanish, he would have written the nonsensical phrase
26 about “buttonholes from hoop earrings.”

27 As noted above, the “some evidence” requirement is satisfied if there is at least one item
28 of evidence from which the conclusion – here, that plaintiff was still engaged in gang activity –

1 could rationally be derived. *See Bruce*, 351 F.3d at 1228. Defendants could rationally find that
2 plaintiff wrote his letter in Caliche and that the letter indicated that he continued to be involved
3 in gang activity. Thus, the letter is enough in itself to satisfy the constitutional “some evidence”
4 requirement.

5 It is further noted that plaintiff’s initial placement in the SHU in 2003 was based upon
6 eight different pieces of evidence of his gang affiliation. Plaintiff does not dispute that such
7 evidence could also meet the low threshold of “some evidence” that he was still affiliated with
8 the gang in 2009.

9 As there was at least “some evidence” to support defendants’ decision to re-validate
10 plaintiff as affiliated with a gang, there was no due process violation. Therefore, defendants
11 are entitled to summary judgment.


12 CONCLUSION

13 For the foregoing reasons, defendants’ motion for summary judgment (docket number
14 11) is **GRANTED**.

15 The clerk shall enter judgment and close the file.

16 **IT IS SO ORDERED.**

17 Dated: August 29, 2011.

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19 WILLIAM ALSUP
20 UNITED STATES DISTRICT JUDGE
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